IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 504 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
PALA VISHRAM JASANI & OTHERS

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Appearance :
MS HANSA PUNANI, ADDL. PUBLIC PROSECUTOR for Appellant.
MR YS MANKAD for Respondents.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 30/10/2007

ORAL JUDGMENT

The present appeal is directed against the judgment

and order dated 29.04.1998 passed by learned Judicial Magistrate, First Class, Mundra-Kutch in Criminal Case No. 59 of 1995 acquitting the respondents for the offences punishable under sections 186 and 114 of the Indian Penal Code and section 43 of the Electricity Act, 1948.

As per the prosecution case, when the complainant visited survey No. 369 which was of the ownership of respondent No.1, he found that illegal connection of electricity was taken by the respondents. The respondents caused hindrance to the complainant when he visited survey No. 369 to ascertain as to whether illegal connection of electric supply was taken by the respondents. Thus the respondents, as per the prosecution case, caused hindrance to the complainant and took illegal supply of electricity from the adjoining field, and have therefore committed the offences punishable under sections 186 and 114 of the Indian Penal Code and section 43 of the Electricity Act, 1948.

The prosecution has examined 19 witnesses in order to prove the inextricable involvement of the respondents in the commission of the offences. The prosecution has also placed reliance on the documentary evidence such as

the panchnama of the place of the incident and the complaint etc. to corroborate the prosecution case with regard to involvement of the respondents in the commission of offence. Learned Judicial Magistrate, First Class, Mundra, after considering the entire gamut of oral depositions and documentary evidence held that the prosecution has miserably failed to establish that illegal electric connection was taken by the respondents from the adjoining field and the prosecution has also not established that hindrance was caused to the complainant when he visited survey No. 369 of the respondent No.1. Thus, the learned Judge, after discussing the evidence in great detail, acquitted the respondents for the offences punishable under sections 186 and 114 of the Indian Penal Code and section 43 of the Electricity Act, 1948.

Ms. Hansa Punani, learned Additional Public Prosecutor representing the State submitted that the prosecution has examined 19 witnesses. It is true that some of the witnesses have turned hostile and has not supported the prosecution but the deposition adduced by PW.1, Ramkrishna Gopalkrishna Iyer, Exh.13, supports the prosecution story about illegal electric connection taken by the respondents from the adjoining field. The respondents also made an attempt to assault the officer

of the G.E.B. when he visited survey No. 369 for the purpose of inspection. She submitted that this aspect has been overlooked by the learned trial Judge in acquitting the respondents. Learned Additional Public Prosecutor further submitted that the trial Court has not considered the entire evidence on record of the case in its proper perspective before acquitting the respondents. Thus, on perusal of the entire evidence on record of the case, the order passed by the learned trial Judge requires to be set aside and the respondents be convicted for the offences punishable under sections 186 and 114 of the Indian Penal Code and section 43 of the Electricity Act, 1948.

On the other hand, learned advocate Mr. Y.S. Mankad appearing for the respondents No.1 to 4 submitted that the prosecution has miserably failed to prove involvement of the respondents in the commission of the offence, and, therefore, the order of acquittal does not call for any interference. He further submitted that the reasons assigned by the learned trial Judge in acquitting the respondents are just and proper and the same was passed after going through the entire oral depositions and documentary evidence, and no interference is called for in the order passed by the learned trial Judge, and the

same requires to be upheld and the appeal filed by the State requires to be dismissed.

I have heard Ms. Hansa Punani, learned Additional Public Prosecutor for the State and Mr. Mankad, learned advocate of the respondents at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

On re-appreciation of the entire evidence on the record of the case, this Court finds that the evidence adduced by the prosecution, more particularly the deposition of PW.1 Ramkrishna Goaplkrishna Iyer, Exh.13 does not get the necessary corroboration from other witnesses so as to indicate involvement of the respondents in the commission of the offence. On perusal of evidence adduced by the prosecution, it also becomes clear that no illegal connection was taken by the respondents from the adjoining field and no clinching evidence is forthcoming from the oral deposition and documentary evidence relied upon by the prosecution. There is no cogent and convincing evidence to show that

the officer of the GEB who visited survey No. 369 was prevented from performing his duties within the meaning of section 186 of the Indian Penal Code.

In view of the aforesaid facts and circumstances of the case, I do not find any infirmities in the order passed by the trial Court acquitting the respondents for the offences punishable under sections 186 and 114 of the Indian Penal Code and section 43 of the Electricity Act, 1948.

This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Judge who had the opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Judge, the Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and this Court is of the opinion that expression of general agreement with the

view taken by the learned Judge would be sufficient in the facts of the case. This is so in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Others Vs. Bijendra Narain Chaudhari, AIR 1967 SC 1124, and (2) State of Karnataka Vs. Hema Reddy and Another, AIR 1981 SC 1417.

For the foregoing reasons, the appeal fails and is dismissed. Bail bonds of each respondent stand cancelled.

mathew [H.B.ANTANI, J.]